

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

FOWLKES, et al.

Serial No.: 09/050,359

Filed: March 31, 1998

For: IDENTIFICATION OF DRUGS
USING COMPLEMENTARY...

Art Unit: 1627

Examiner: WESSENDORF, T.

Washington, D.C.

January 4, 2001

Docket No.: FOWLKES=4B

REQUEST TO VACATE

Honorable Commissioner of Patents
Washington, D.C. 20231

S i r :

The office action mailed December 5, 2000 should be vacated, or a supplemental action mailed and the period restarted, on the grounds that the office action is incomplete. See 37 CFR \$1.104, MPEP \$707.07(f) and (g).

Applicants filed an IDS on October 21, 1999. The receipt of this IDS was acknowledged on November 29, 1999, but the IDS was refused consideration for the reasons set forth in \$3 of the action. In the May 24, 2000 amendment, \$1.3, applicants pointed out that the Examiner's treatment of the IDS was erroneous. The present action was incomplete in that it neither responds to applicants' \$1.3 nor acknowledges consideration of the IDS (e.g., by returning an initialed PTO-1449).

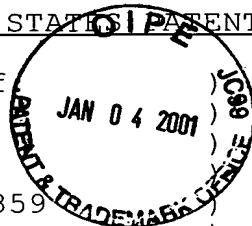
Since this defect has been pointed out within one month of the action, applicants should be given three months from the mail date of the substitute or supplemental office action correcting the defect as a new SSP. MPEP \$710.06.

In addition, we must point out that the November 29, 1999 office action further erred in that, at page 16, it indicated that certain additional references were "pertinent to the pending application" but did not make those references of record.

While it is too late to vacate the November 29, 1999 office action as incomplete, the December 6, 2000 office action is

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defective in that it, too failed to make those references of record even though they were previously discovered by the PTO. This defect should now be corrected.

Respectfully submitted,

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